

chants Bank stock to the amount of \$850, and that transfer of the stock in that bank being treated, *pro tanto*, as an execution of the contract for that purchase, Wayman is not responsible for that, but, *non constat*, that the court, at the time of the transfer, would have directed the purchase of the same stock as an investment. If the proposition had been made to the court, the parties interested would have had an opportunity of objecting to it, and might have shown its impropriety then, or the Chancellor might have considered it better to have made any *further* investment in different funds, or in another bank. The same reasons will equally apply to the deposit in the Savings Bank.

Wayman had made investments before, and therefore knew that the approbation of the court was required, and should be first obtained by him. It would be very dangerous to trust property to permit trustees thus to throw off the superintending power of the court, and not to be responsible for losses incurred by the exercise of their own discretion, although not incurred by any direct action in reference to the management of the fund. I think, therefore, that Wayman is responsible both for the diminished value of the residue of the stock of the Farmers and Merchants Bank above the \$850 purchase, and for the amount lost in the Savings Institution. He is liable also for simple interest from the time of the transfer, except where Mrs. Jones has received the dividends to which she was entitled, unless they may be required to make up the amount for which she is responsible. As to the \$1,000 received from Hardesty, it is admitted that Wayman is responsible for it, with interest from the time of the receipt.

Mrs. Jones, as administratrix of her husband, is responsible for the residue of the abstracted stock remaining due after the deduction of the value of transferred stock, for which Wayman is decided to be responsible, and can receive nothing until that be paid, the Court of Appeals having so decided. She is also responsible as distributee for the amount of her husband's estate distributed to her, and the other distributees, her wards, are also answerable for the amount received by them from the estate of their father, and which ought to have been applied to